

The Lien Epic: Don't Lose Your Attorneys Lien

by Patrick M. Kinnally

It seems in today's world when a settlement or fund gets created through litigation that just about everyone has a lien: hospitals, physical therapists, Medicare, physicians, dentists and mechanics. And there are a few odd ones, too. Like for farriers (the Horseshoers Lien Act),¹ and the Stallion and Jack Service Lien Act (do you know what a jennet is?).² In fact, the various lien statutes cover 350 pages of text.³ That is a lot to stomach.

Often we are asked to adjudicate and enforce many of these liens. In the normal personal injury case, this can take some moxie, time and petulant argument. But in a rush to determine the efficacy of these attachments, we sometimes overlook that we, as attorneys, have liens as well.⁴ We should be as conversant with their types as well as how they are enforced. If we do not, they may be lost.

Attorneys liens in Illinois can be divided into two specie. The first is called a retaining or general lien. This type of lien is possessory in nature and attaches to property that belongs to the client, but which came into the attorney's possession during representation of the client.⁵ A good example would be the records or papers that were obtained by the attorney in order to advocate for the client.⁶ This common law lien has been recognized in favor of the attorney in order to assure payment of his or her fees. It is, however, not one that is actively enforced by judicial proceedings. In other words, the attorney has the right to retain the property of the client until his fees are paid.⁷ Finally, if the attorney surrenders the property to the client the common law lien disappears.

The purpose of the lien is to make the

client pay, or post adequate security for the payment of the attorneys fees. Although passive, it gives an attorney considerable leverage in releasing records to which the lien adheres. Generally speaking, unless the client is indigent or asserting the lien would prejudice the client's liberty interests or prevent the ability to defend a criminal case, an attorney need not surrender assertion of the lien.⁸

Of course, when a less stringent method can be employed so the amount owing can be resolved or secured, it might behoove us to do so. How do you do that? Assert your statutory attorneys lien.

The second breed, the statutory attorneys lien, is a charging lien. It attaches to the proceeds that have been recovered in the underlying litigation, but only if certain conditions are satisfied.⁹ The remedy it accords an attorney is purely statutory.

The Attorneys Lien Act states in pertinent part:

Attorneys at law shall have a lien upon all claims . . . which may be placed in their hands by their clients for suit or collection . . . for the amount of any fee which may have been agreed upon by and between such attorneys and their clients, or, in the absence of such agreement, for a reasonable fee, for the services of such suits, claims, demands or causes of action, plus costs and expenses. . . .

To enforce such lien, such attorneys shall serve notice in writing, which service may be made by registered or certified mail, upon the party

against whom their clients may have such suits, claims or causes of action, claiming such lien and stating therein the interest they have in such suits, claims, demands or causes of action. Such lien shall attach to any verdict, judgment or order entered and to any money or property which may be recovered, on account of such suits, claims, demands or causes of action, from and after the time of service of the notice. On petition filed by such attorneys or their clients any court of competent jurisdiction shall, on not less than 5 days' notice to the adverse party, adjudicate the rights of the parties and enforce the lien.¹⁰

The Act establishes the methodology by which an attorneys lien is created. Since it is a statutory remedy, it is strictly construed.¹¹ In order to possess such a lien the attorney must have been retained by a client to make a claim. Also, the attorney must perfect the lien by serving the statutory notice, in writing, *upon the adverse party* against whom the claim is being asserted.¹²

¹ 770 ILL. COMP. STAT. 30/0.01 *et seq.* (West 2010).

² 770 ILL. COMP. STAT. 100/0.01 *et seq.* (West 2010).

³ See 770 ILL. COMP. STAT. 5/0.01 *et seq.* (West 2010) through 770 ILL. COMP. STAT. 110/1 *et seq.* (West 2010).

⁴ See 770 ILL. COMP. STAT. 5/0.01 *et seq.* (West 2010).

⁵ *Twin Sewer & Water, Inc. v. Midwest Bank*, 308 Ill. App. 3d 662 (1st Dist. 1999).

⁶ See *Upgrade Corp. v. Michigan Carton Co.*, 87 Ill. App. 3d 662 (1st Dist. 1980).

⁷ See *Jovan v. Starr*, 87 Ill. App. 2d 350 (1st Dist. 1967).

⁸ *In re Liquidation of Mile Square Health Plan of Illinois*, 218 Ill. App. 3d 674 (1st Dist. 1991).

⁹ See *Deking v. Urban Inv. & Dev. Co.*, 155 Ill. App. 3d 594 (1st Dist. 1987).

¹⁰ 770 ILL. COMP. STAT. 5/1 (West 2010).

¹¹ *People v. Phillip Morris Inc.*, 198 Ill. 2d 87 (2001).

¹² *Rhoades v. Norfolk & Western Ry. Co.*, 78 Ill. 2d 227 (1979); *T.M. Ryan Co. v. 5350 South Shore, LLC*, 361 Ill. App. 3d 1173 (1st Dist. 2005); *Kovitz Shiffrin Nesbit P.C. v. Rossiello*, 392 Ill. App. 3d 1059 (1st Dist. 2009).



Patrick M. Kinnally

Patrick M. Kinnally, Esq. is a partner of Kinnally, Flaherty, Krentz & Loran, P.C., 2114 Deerpath Road, Aurora, Illinois 60506. He can be reached at (630) 907-0909 and pkinnally@kfkllaw.com. Web Page: www.kfkllaw.com.